IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 25TH OCTOBER, 2007 / 3RD KARTHIKA, 1929

FAO.No. 112 of 2005

(AGAINST THE ORDER DATED 19/02/2004 IN IA.6149/2003 IN LAR.234/2003 of SUBORDINATE JUDGE'S COURT, THALASSERY)
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APPELLANT/PETITIONER/CLAIMANT:

VALAPPILEKANDY SATHI DEVI,
W/O. C.H.KARUNAKARAN (LATE),
78 YEARS, NO OCCUPATION,
V.K.HOUSE, THAVAKKARA, KANNUR THROUGH HER POWER OF ATTORNEY HOLDER, V.K.PRASANNAN, S/O.KARUNAKARAN AGED 54 YEARS, RESIDING IN V.K.HOUSE, THAVAKKARA, KANNUR.

BY ADV. SRI.K.V.PAVITHRAN
SRI.M.P.JAYANANDAN

RESPONDENTS/RESPONDENTS:
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1. LAND ACQUISITION OFFICER, THALASSERI (SPECIAL TAHASILDAR (LA) THALASSERI), P.O.THALASSERI.

2. THE SECRETARY, KANNUR MUNICIPALITY, P.O.KANNUR.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN.
BY ADV. SRI.K.K.CHANDRAN PILLAI
BY ADV. SRI.SAJI SANKARAN NAIR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD

ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

F.A.O.No. 112 of 2005

Dated this the 25th day of October, 2007

J U D G M E N T

Raman,J:

Delay was condoned after service of notice on the respondents. Subsequently, the appeal was admitted on file. A copy of the appeal memorandum is already served on the counsel who appeared in the delay stage and memo is also filed. It is recorded that the service is complete.

2. This appeal is filed against the order dismissing the application for restoration under Order 9 Rule 9 of the Code of Civil Procedure (for short 'C.P.C.'). The Land Acquisition Reference was posted on 10.11.2003 for appearance. Since the claimant did not appear on that day, the reference was answered recording his absence. Though on the same day, a petition for restoration was filed as I.A.No.6149 of 2003, the same was dismissed stating that since the reference is already answered, it cannot be re-opened under Order 9 Rule 9 of the Code of Civil Procedure.

3. Heard.

4. The question as to whether in such circumstances the application under Order 9 Rule 9 of the Code of Civil Procedure will lie, has come up for consideration before the Apex Court. The Apex Court, in a decision reported in **Rajmani** v. **Collector, Raipur** [1997(1) KLT Case No.6 page 5], had held that if the award came to be passed after setting aside the claimant ex-parte, though an appeal would lie under Section 54 of the Act against such an award, alternate remedy is also available. It was also held that, that question could equally be gone into an application filed by the claimant either under Order 9, Rule 9 C.P.C or under Order 9, Rule 13 or Section 151 C.P.C. It was observed that the appropriate provision that would be applicable to the claimant would be Order 9 Rule 9 read with Section 151 of the Code of Civil Procedure. In view of the above decision, the order dated 19.2.2004 in I.A.No.6149 of 2003 in L.A.R.No.234 of 2003 is to be set aside.

5. Accordingly, we set aside the order and remand the matter to the Subordinate Judge's Court, Thalassery for fresh consideration on merits and in accordance with law. Parties shall appear before the court below on **26th November, 2007**.

The appeal is allowed as above.

P.R.RAMAN,
Judge

V.K.MOHANAN,
Judge

Mbs/

S.SIRI JAGAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007